No. 71-878

In the Supreme Court of the United States

OCTOBER TERM, 1971

TREVIA RHADEDENE THOMAS, PETITIONER

v.

UNITED STATES OF AMERICA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Department of Justice,
Washington, D.C. 20530.

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On August 19, 1970, petitioner and one Allen Robinson were indicted in the Southern District of California for smuggling marijuana in violation of 21 U.S.C. (1964 ed.) 176(a). On October 8, 1970, a motion to suppress the 106 pounds of marijuana seized at an inspection station from a car which petition was driving was denied after a hearing (Pet. App. B). On December 7, 1970, pursuant to a plea bargain, a superseding information was filed charging petitioner with importation of marijuana without

having registered and paid a special tax, in violation of 26 U.S.C. (1964 ed.) 4755(a)(1). Petitioner, on the advice of counsel, pleaded guilty. She was sentenced to three years' imprisonment, imposition of which was suspended on condition that she spend the first six months in a jail-type institution and then be placed on probation for three years. The court of appeals affirmed the conviction *per curiam* (Pet. App. A).

Petitioner contends that she should have been permitted on appeal to litigate the merits of the search and seizure claim. As the court below held, however, a voluntary guilty plea waives the right later to attack all nonjurisdictional defects. This rule has been consistently applied to bar the assertion of search and seizure claims.[1] See *Thomas* v. *United States*, 290 F.2d 696 (C.A. 9), certiorari denied, 368 U.S. 964; *Hughes* v. *United States*, 371 F.2d 694 (C.A. 8); *Alexander* v. *United States*, 290 F.2d 252 (C.A. 5), certiorari denied, 368 U.S. 891; *Edwards* v. *United States*, 256 F.2d 707 (C.A.D.C.), certiorari denied, 358 U.S. 847. Moreover, contrary to petitioner's contention, an otherwise valid guilty plea is not rendered involuntary when a defendant, on advice of counsel, pleads guilty to a lesser crime in order to limit the possible penalty to less than that authorized

[1] There is no merit to petitioner's second contention that her search and seizure claim is one of jurisdictional magnitude. Petitioner was convicted on her own guilty plea, not on the admission of tainted evidence. See *Machibroda* v. *United States*, 368 U.S. 487, 493; *Kercheval* v. *United States*, 274 U.S. 220, 223.

for a conviction after trial, or because the defendant fears conviction as a result of the introduction of certain alleged illegally obtained evidence. See *Brady* v. *United States*, 397 U.S. 742; *McMann* v. *Richardson*, 397 U.S. 759, 768-774; *Parker* v. *North Carolina*, 397 U.S. 790.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1972.

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[2] In any event, the search in the instant case was proper. The evidence at the hearing on the motion to suppress showed that on August 8, 1970, petitioner, accompanied by Allen Robinson, drove into the border patrol checkpoint on Highway 5 at San Onofre, California, about seventy miles from the Mexican border (R.T. 10). The immigration officers desired to look into the trunk of the auto to search for aliens. They were told by petitioner and Robinson that they did not have the keys to the trunk. An agent, assisted by Robinson, then proceeded to remove the back seat so that the trunk could be seen. After the rear seat was removed, the agent immediately noticed the strong smell of marijuana and observed what appeared to be packages of marijuana in the trunk of the car. Petitioner was then arrested and approximately 106 pounds of marijuana were removed from the vehicle (R.T. 11-12).

Since petitioner did not product the keys to the trunk, the way in which the officers sought to determine its contents was a reasonable search. See 8 U.S.C. 1357; *Fumagalli* v. *United States*, 429 F. 2d 1011 (C.A. 9); *Barba-Reyes* v. *United States*, 387 F. 2d 91 (C.A. 9); *Fernandez* v. *United States*, 321 F. 2d 283 (C.A. 9).

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